

S.B. CIVIL WRIT PETITION NO.3587/2005

Bhanwara and others vs. State of Raj. and others.

Date : 21.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. PS Bhati, for the petitioners.

Mr. LR Upadhyay, Dy.GA, for the respondents.

Mr. Anand Mohan, Dy. Conservator of Forest present in person

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Heard learned counsel for the parties.

The petitioners are residents of village Kaludi, Tehsil Pachpadra of District Barmer. They are aggrieved against the manner in which the respondent no.3 is proceeding to act upon any decision of the forest department or State Government for plantation in khasra Nos.65 and 133 of village Kitpala falling in the area of Gram Panchayat, Sindli Jangir. According to the petitioners, water is flowing from these two khasras towards a Nadi and since the respondents are planning to dig a trench encircling khasras no.65 and 133, therefore, the villagers will be deprived from the benefit of natural flow of water and consequential villagers will be deprived from the water of Nadi. Even the Sub Divisional Magistrate considered an inspection report dated 22.3.2005 and directed the forest department to stop the work with immediate effect in public interest but still the forest department is digging a long trench.

The respondents submitted reply to the writ petition

and stated that the forest department launched a programme for tree plantation and for that purpose, Gram Panchayat Sindali has resolved that the land measuring 1100 bighas which is available may be given for tree plantation and development of Charagah. It is also submitted that the total land of khasra nos.65 and 133 is 530 bighas and Nadi is situated in Khasra No.66 which is away from the proposed site by 1.25 kms. It is submitted that by the project undertaken by the respondents, the water flow will not be interrupted. It is also submitted that the villagers of Kaludi are not receiving water from this Nadi as that village is about 6-7 kms. away from the Nadi. Not only this, the villagers of village Kitpala submitted representations on 9.4.2005 and 13.4.2005 praying therein for start of the above development work. Copies of these representations are placed on record as Annex.R/4 and Annex.R/5. The Gram Panchayat, Sindli has also passed a resolution on 7.5.2005 for starting the abovementioned development work. The Sarpanch requested the District Collector, Barmer for starting the above development work vide letter dated 5.5.2005. In these facts, the respondents started its development work from 1.6.2005.

When this Court directed, the officer-in-charge of the respondents Mr. Anand Mohan appeared in Court yesterday and in pursuance of this Court's direction to disclose the entire scheme, he has produced the scheme framed under the D.P.R. It is provided in Clause NO.2.2 how the proposed developed area will be protected and in this, it is

provided that the proposed area may be protected by fencing or barbed wire and by constructing a ditch. In the report, there is a clear mention to have project of plantation in village Sindli and particularly, at Kitpala.

As per the Model Estimate provided in detail scheme, a ditch fencing is also provided.

According to learned counsel for the petitioners, the petitioners' grievance is only to the extent that the free flow of water towards Nadi may not be obstructed and subsequently, after filing of the writ petition, they came to know that the ditch is wide enough having 5 feet width and 4 feet depth. The petitioners also came to know that the ditch is running 1000 meters in length, therefore, according to learned counsel for the petitioners, there is every possibility of the cattle being trapped in that ditch looking to its width and location. It is also submitted that even if it is permissible mode of protecting the forest property, then the respondents may re-consider and may adopt another mode of protecting their plantation by not only causing harm to animals but also to persons as well as they may explore such mode by which natural flow of water may not be obstructed.

Learned counsel for the respondents submitted that they have already constructed a ditch and this fact is not in dispute. It was also pointed out from the site map that the respondents raised the wall along with direction of flow of water and they are not proposing to construct any wall

which may obstruct the water flow in any manner but at the same time, the plantation cannot be protected for such a long area by keeping guard etc. and, therefore, ditch protection has been provided. It is also submitted that it is not the allegation of the petitioners that by mere digging ditch, water will flow for the benefit of some other persons. The officer-in-charge present in the Court also submits that they have no intention to cause harm to anybody and there exists no reason for causing harm to anybody as they are doing the work for public benefit. It is also submitted that by this ditch, the water will not flow to some other place and this is first phase of arrangement of protecting the proposed plantation otherwise the respondents after putting this ditch will put seeds for growing the trees and vegetation along with ditch so that, that will be a proper protection of plantation and by the time those plants will protect the planned development of plantation by becoming fence for the area in question.

In view of the stand taken by the respondents and in view of the detailed survey report permitting the ditch method of protecting the plantation, this Court has no reason to believe that the ditch has been constructed only to deprive the villagers from water coming from this area.

So far as the contention of the learned counsel for the petitioners that the authorities themselves may consider that whether they should adopt the method of laying down ditch for protecting the area in the present day as a proper way because of the reason that there is possibility

of expansion of population everywhere and any animal may fall in the ditch is concerned, for that purpose, the authorities may think and take the decision according to the feasibility in implementing the scheme by avoiding ditch fencing near the villages or where there may be free movement of people and animals. They may also explore whether the alternate mode will be better way of protecting the forest and even if it is more expensive, then also, alternate mode of protecting forest can be adopted to safeguard the animals of the village and villagers also. These matters are required to be considered by the authorities themselves and this Court cannot issue directions to the authorities to go for a particular mode of fencing in view of the fact that at present, there is an opinion in the project which is presumed to be formulated by the expert persons.

In view of the above, no direction is needed in this writ petition and accordingly, the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya